United States Court of Appeals

for the Second Circuit

APPELLANT'S BRIEF

75-7658 1/6/76

IN THE

UNITED STATES COURT OF APPEALS

For The Second Circuit

Docket No. 75-7658

Exhibit

RALPH J. LOMBARDI,

Appellant

vs.

CHARLES BOCKHOLDT,
NORMAN EBENSTEIN, ATTY,
JAMES F. COLLINS, JUDGE
CHARLES S. HOUSE, JUDGE
ALVA P. LOISELLE, JUDGE
HERBERT S. MacDONALD, JUDGE
JOSEPH W. BOGDANSKI, JUDGE
JOSEPH S. LONGO, JUDGE and
M. JOSEPH BLUMENFELD, U.S.D.J.

Appellees

APPELLANT'S BRIEF

On Appeal from the the United States District Court
for the District of Connecticut

For Appellant Pro Se

Ralph J. Lombardi
224 So. Elm Street
Windsor Locks, Conn. 06096

B p/s

1

U. S. Court of Appeals

Second Circuit

Docket No. 75-7658

Exhibits

Exhibits designated as part of this appeal

The complete record and exhibits filed with the complaint and all subsequent papers, filed by the Appellant.

The complete appeal (Docket No. 75-7576) filed by the Appellant and all subsequent papers filed by the Appellant.

The complete transcript (of hearing 9/29/75)

Exhibit "P" (attached)

Exhibit "O" (attached)

Supporting Argument

The Plaintiff-Appellant herein after designated the Appellant, appeals from the (illegal) ruling of Defendant Judge Blumenfeld titled RULING ON MOTIONS TO DISMISS for the following reasons:

1. Defendant Judge Blumenfeld should have disqualified himself and/or been disqualified under one or more of the following provisions of law; 28 U.S.C. 455A; the canons of Judicial Ethics, 28 U.S.C. 144, 28 U.S.C. 332, and the U. S. Constitution, Article 3 section 1, article 6, and amendments 1, 7, 9 and 14.

2. Subsequently, Defendant Judge Blumenfeld should not have made any decisions while an appeal challenging his impartiality and competency was in question. He even acknowledged he was a Defendant.

3. Said Defendant Judge Blumenfeld was declared disqualified and made a Defendant for good cause, prior to his ruling on the hearing of September 29, 1975. (see exhibits A and B of appeal docket No. 75-7576)

4. After knowing that he was a Defendant, Judge Blumenfeld refused to disqualify himself according to law. (see page 3, lines 12 through 25, and page 11, lines 12 through 22 of the transcript). It is patently wrong and unreasonable to expect that a judge who has exhibited prejulice, inter alia, and who is a Defendant, could possible be fair in this case. In the absence of denials by the Defendant Judge Blumenfeld, the allegations of the Appellant must be taken to be true. (see 256 F. 2d 241)

5. Said Julge Blumenfeld was made a defendant in this suit and declared disqualified because of unethical conduct displayed to the Appellant on Aug. 28, 1975. (see exhibits A, B, C, D, and E of appeal docket No. 75-7576). The subsequent action was filed because the said Defendant failed to abide by his constitutional duties, the Canons of Ethics and other laws (28 U.S.C. 455A, inter alia.

6. Said Defendant refused to allow the Appellant to further support through deposition and witness subpoenae, the charges made in the complaint H-75-221 filed on 7/1/75.

7. Although the evidence filed with the complaint was sufficient in itself to have had the U.S. District Court grant a SUMMARY JUDGEMENT in favor of the Appellant, the said Defendant Julge ignored the Appellant's claims for said Summary Julgement. (see exhibit F)

8. All through the hearing of 9/29/75, the Defendant Julge was wrongfully elusive concerning the issues, (see transcripts) which the Appellant attempted to pursue or read into the record, to support his position. The Defendant Judge would not confirm or deny reading exhibit "B" of the complaint (page 19, line 5 through page 20, line 18 of the transcripts).

9. The Appellant was denied the right to continue at the hearing on the issues pertinent to support the Appellant's position. On page 21, line 22 of said transcript, the Appellant's question to the said Judge was a valid one and the answer :

> "I do not intend to answer any questions of you which apparently reflect upon the integrity or the ability of the Court. Now get that through your"(pause) "understanding" (pause added by Appellant

to correct what the court reporter omitted). The said Julge's answer

reflects an incompetency directly, since he himself confirms the questionability of his integrity, and his statement renders his impartiality defunct.

10. The claim upon which relief can be granted is contained in Motions 1, 2, and 3 of the complaint. The Defendant Judge Blumenfeld did not take up any of the issues ignored by the other Defendant Judges as listed in B & C of the complaint, or the other exhibits. (see 256 F. 2d 241) That portion of rule 12(b)(6) F.R.C.P. which purports to state that this action fails to state a claim upon which relief can be granted does not conform to the U. S. Constitution and is therefore null and void.

11. Jurisdiction is clearly contained within the framework of the U. S. Constitution and U. S. Code. (see complaint) Also the U. S. District Court (Judge Blumenfeld) claims that it does not have jurisdiction and states that the original case was adjudicated in the Connecticut State Courts. Even though the Appellant's suit stems from the original case, it is not an appeal of the original case. Exhibit "O" (Brathwaite) attached, clearly shows that the District Court, (this very same Judge in question now) acted on the complaint and affirmed it without denying jurisdiction and this very same Appeals Court reversed that decision. The U. S. District Court clearly does have jurisdiction. The U. S. District Court does indeed have jurisdiction, under Article 3 section 2 of the U. S. Constitution. Under title 28 section 1343:

> Where allegations of declaration not denied by answer, are sufficient to show jurisdiction of federal court, no proof to establish such jurisdiction is necessary. Fentress Coal & Coke Co. V. Elmore, Tenn. 240 F. 328, 153 C.C.A. 254, Certiorari denied 37 S.Ct. 479, 243 U.S. 652. See also, McCauley v. McCauley D.C. Pa 1913, 202 F. 280.

The right to due process of law was guaranteed not only to citizens but to any person, and the remedy for deprivation of such right was provided by paragraph 14 of former section 41 of this title, and jurisdiction over the enforcement of such rights was given the Federal District Courts by said paragraph. United Elec. Radio & Mach. Workers of America, CIO v. Baldwin, D.C. Conn. 1946 67 F. Supp. 235.

Under this section giving district courts original jurisdiction to redress deprivation of any right, privilege or immunity secured by the United States Constitution or any Act of Congress providing for "equal rights" of citizens, the quoted phrase refers to U.S.C.A. Const. Amend. 14, prohibiting a State from denying to citizens and persons within

its jurisdiction, the equal protection of the laws. McGuire v. Amrein. D.C.Md. 1951, 101 F.Supp. 414.

11. Also under section 1343 title 28 and section 1983 of title 42, one deprived under color of state law of any right, privilege or immunity secured by the Constitution and laws of the United States may obtain redress in the federal courts. Hatfield v. Bailleaux C.A. Or. 1961, 290 F. 2d 632. The portions of Hansen v. Ahlgrimm, 520 F. 2d 768 and Basista V. Weir, 340 F. 2d 74 which purports to state that the conduct complained of in this case, was done or caused to be done by a person, or persons, not acting under the color of state law, do not conform to the U. S. Constitution and are therefore null and void. When the Defendant Judges acted wrongfully by abusing discretion under the "color of state law," in violation of Constitutional laws and rights they waived any privilege or immunity which could be established even by prior rule or custom however illegally obtained. The Appellant's complaint clearly states the violations of laws perpetrated by the Defendants. Because of the lack of denials in the Defendants'

answers, this Appeal Court must consider the allegations to be true. Also the evidence attached to the complaint supports that position. (see 256 F. 2d 241)

12. The Defendant Judges, by prima facie evidence exhibited, could have easily seen that the Defendant Norman Ebenstein lied to the court when he stated on 7/6/73 that:

> "I know you called Mr. Bockholdt, that talking to you about the case was..." and a few minutes later stated, "Your Honor, a, conversations did not take place....."

(see Plaintiff's exhibit B of the complaint, page 8 center, and exhibit C of the complaint, page 2 top.)

13. In addition, the issues raised by the Appellant to the State Supreme Court were not answered. It was the Ministerial Duty of said Court to perform for an appellant, and was deliberately denied to this Appellant. The presence of malice and the intention to deprive a person of his civil rights is wholly incompatible with the judicial function. When a judge acts intentionally and knowingly to deprive a person of his constitutional rights he exercises no discretion or individual judgment; he acts no longer as a judge, but as a "minister" of his own prejudices. The U. S. District Court must be well aware of this fact and refused to let the Appellant read those issues into the Record of the hearing (9/29/75). (see pages 19 and 20 of exhibit E)

Those issues are:

a. "The trial court suppressed the truth in its findings, contrary to the evidence presented, abused its discretion of reasonableness in determining that the Plaintiff did not sustain the burden of proof by not considering the rules of evidence properly, especially subsequent to the hearings of 7/6/73 and 7/10/73 (transcripts submitted as evidence), and did not listen to the tape recorded conversations submitted as evidence, to accurately evaluate the truth of the Defendant's wrongdoing and why." (see page 1 of exhibit B of the complaint)

b. "Was the trial court in error in not listening to the tapes (exhibits AA-1, BB-1, and CC-1) since they were presented to the court on 7/10/73 and they were the prima facie evidence?"

c. "Could all the evidence presented by the Plaintiff sustain a burden of proof if weighed, without prejudice, according to the rules of evidence?"

d. "Did the trial court overlook and condone the perjury of the Defendant and his attorney lying?" (see exhibit C of the complaint, page 4)

e. Does any court have authority to overlook lies and perjury?

f. Does any court have authority to overlook perjury at the expense of the aggrieved party?

g. Does any court have authority to overlook perjury for any reason?

h. Can any court overlook an attorney lying, without abusing it's discretion?

14. It is not within the jurisdiction of any judge to abuse his discretion.

15. The Defendant Judges were acting under the color of state law when they abused their discretion while being bound by oath (Conn. Statutes 1-25) thus violating the Appellant's rights (U.S.C. title 28 par. 1343, title 42 par. 1983, title 18 par. 242 and 241). Under section 242 of the U. S. Criminal Code title 18:

> "Whoever, under color of law, statute or ordinance, regulation, or custom, wilfully subjects any inhabitants of any state to the deprivation of any rights, privileges, or immunities secured or protected by the Constitution or Laws of the United States...shall be fined no more than $1,000 or imprisoned one year or both."

16. Judges cannot be granted immunity by custom, privilege or "law" etc. without coming in conflict with the above law and the U. S. Constitution; Therefore the deprivation of the Appellant's rights.

The statement that "state court judges, acting within their jurisdiction are immune from a suit" rather than being "beyond dispute" is erroneous, and not supported by the Constitution. It should be noted that the basis of the Appellant's complaint is that the Judges were not acting within "their jurisdiction" having demonstrated an abuse of discretion and reasonableness by not taking up the issues raised by the Appellant, inter alia. The Defendant Judges also failed to properly consider the rules of evidence. (tapes and transcripts of telephone conversations which constitute admissions of guilt)

The Appellant claims that the Defendant Judges did not act properly within the scope of their judicial duties, having abused their discretion and the laws in applying the rules of evidence, and they therefore cannot claim immunity. Violation of the Constitution (s), the Canons of Judicial Ethics and the U.S. code abound. (see complaint) The portions of Hansen v. Ahlgrimm 520 F. 2d 768, Jones v. Jones 410 F. 2d 365 and Pierson v. Roy 386 U.S. 547 which purport to state that Judges are immune from suit do not conform to the U. S. Constitution and are therefore null and void. The Appellant does state a claim against the Defendant Judges because they breached their constitutional oath by abusing their discretion under the color of state law and deprived the Appellant of his rights in doing so. (see complaint) The Appellant made efforts to have the State Courts rule properly on the evidence and specifically pointed out the lies of Defendant Attorney Ebenstein and the constituted admission of guilt by the Defendant Charles Bockholdt. (see all exhibits of the complaint (H-75-221) and exhibit F attached) The issues were ignored by the Conn. Courts. This suit was filed because the said Courts failed to use reasonableness in applying the rules of evidence in the light most favorable to support the Appellant's position without demanding proof impossible to obtain. They abused their discretion and their refusal to take up the issues constitutes a deliberate obstruction of justice. Judges are not immune from suit for abuses of discretion.

There is no constitutional immunity granted and any claims to the contrary are illegal and therefore invalid even though previous rulings purported to grant such by custom or precedent. In Basista v. Weir: 340 F 2d 74

> "The Civil Rights Act is not to be interpreted narrowly. Valle v. Stengel, 176 F 2d 697, 702 (3 Cir. 1949). In Hague v. C.I.O., 101 F 2d 774, 789 (d Cir.), modified, 307 U.S. 496, 59 S.Ct. 954, 83 L.Ed. 1423 (1939), we said "(s)uch an action sounds in tort." In Picking v. Pennsylvania R. Co., supra, 151 F.2d at 249 we stated, "(W)e are compelled to the conclusion that Congress gave a right of action sounding in tort to every individual whose federal rights were treaspassed upon by any officer acting under pretense of state law." In Monroe v. Pape, supra, 365 U.S. at 187, 81 S.Ct. at 484, it was said that "Section 1979 (42 U.S.C.A.§ 1983) should be read against the background of tort liability that makes a man responsible for the natural consequences of his actions." While a specific intent to deprive a person of his constitutional rights is required under criminal sections of the Civil Rights Acts, 18 U.S.C.§§ 241, 242, neither specific intent nor purpose to deprive an individual of his civil rights is a prerequisite to civil liability under the civil provisions of the Civil Rights Act. See Stringer v. Dilger, 313 F.2d 536 (10 Cir. 1963)
> (emphasis added)

The Defendant Juiges misused, by abuse, the power conferred upon them. Still under Basista v. Weir:

> "The statutory words "under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory" do not exclude from the purview of the Civil Rights statutes acts of an official who can show no authority for what he does. Monroe v. Pape, supra 365 U.S. at 171-187,

> 61 S.Ct. 473. The misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law is action pursued under color of law within the meaning of 42 U.S.C.A. § 1983. United States v. Classic, 313 U.S. 299, 326, 61 S.Ct. 1031, 85 L.Ed. 1368 (1941); Screws v. United States, 325 U.S. 91, 107-113, 65 S.Ct. 1031, 89 L.Ed. 1495 (1944); Picking v. Pennsylvania R. Co., 151 F.2d 240 (3 Cir. 1945)

The Defendant Judges have no authority except through law. Therefore when they acted illegally, said acts were, ipso facto, under the color of law.

17. Attorney Ebenstein having acquired a monopoly on the practice of law through obtaining a state license, was most certainly acting under the color of law. He violated Conn. Statute 1-25 inter alia. This logic also applies to the Defendant Judges. The portions of Hansen v. Ahlgrimm, and Skolnick v. Martin, 317 F. 2d 855, cert. denied, 375 U.S. 908 which purport to state that an attorney, such as Norman Ebenstein, an officer, (commissioner) of the Conn. Courts is not acting under color of state law do not conform to the U.S. Constitution and are therefore null and void.

18. The portions of Hansen v. Ahlgrimm, Sykes v. State of California (Dept. of Motor Vehicles), 497 F. 2d 197, Hill v. McClellan, 490 F. 2d 859 and Brown v. Dunne, 409 F. 2d 341, which purport to state that a conspiracy between an individual and his lawyer to commit perjury, which is condoned by the state courts, as in this case, is beyond the reach of establishing liability under color of state law,

do not conform to the U.S. Constitution and are therefore null and void.

Defendant Charles Bockholdt violated Conn. Statute 1-25 inter alia. The Defendants named in the complaint are not immune from suit and it most certainly is the jurisdictional duty of the U.S. District Court to properly adjudicate this case.

The Appellant expects this Court to remand this case to the U. S. District Court for trial by an impartial judge because requirements of jurisdiction and other obligations are herein established.

APPELLANT

Ralph J. Lombardi

Ralph J. Lombardi
224 So. Elm Street
Windsor Locks, Conn.

C E R T I F I C A T I O N

This is to certify that a copy of the above Brief was mailed January 2, 1976 to:

Attorney General Carl R. Ajello
Attn: Daniel R. Schaefer, Asst. Atty. General
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M. Joseph Blumenfeld, U.S.D.J.
450 Main Street
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Ralph J. Lombardi
224 So. Elm Street
Windsor Locks, Conn.

January 2, 1976

Exhibit F

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

RALPH J. LOMBARDI Plaintiff	)	CIVIL & CRIMINAL
Vs.	)	H-75-221
CHARLES BOCKHOLDT NORMAN EBENSTEIN, ATTY. JAMES F. COLLINS, JUDGE CHARLES S. HOUSE, JUDGE ALVA P. LOISELLE, JUDGE HERBERT S. MacDONALD, JUDGE JOSEPH W. BOGDANSKI, JUDGE JOSEPH S. LONGO, JUDGE, and M. JOSEPH BLUMENFELD, U.S.D.J. Defendants	)	September 12, 1975

CLAIM FOR SUMMARY JUDGEMENT
FOR THE PLAINTIFF

The Plaintiff claims a SUMMARY JUDGEMENT.

This Court, knowing the rules of evidence as to what constitutes an admission of guilt, need only do the following to warrant such a juigement:

1. Impartially, read the transcripts of the conversations and/or listen to the tapes. (Exhibits B and C of the Complaint)

2. Answer truthfully, the issues and questions raised by the Plaintiff in Exhibits B and C of the Complaint.

3. Look at all subsequent exhibits filed by the Plaintiff in support of said claims. Under the doctrine of "at first sight" this Court can decide the issues for the Plaintiff, on the basis of the constituted admissions in the transcripts made by Defendant CHARLES BOCKHOLDT. Any further evidence of each Defendants' deposition, direct examination and/or other exhibits, could only strengthen the Plaintiff's position.

4. Any court,

"May dispense with proof as to facts which are apparent on observation" 115C 168

(See Plaintiff's Exhibit B page 7)

Exhibit F

Some of the proofs which are "apparent on observation" appear on the following pages listed of Exhibits A: (transcripts of conversations)

Conversation date	page	portion
6/1/73	6	top half
5/2/73	2	bottom
5/2/73	3	top
5/2/73	4	middle
5/2/73	5	middle
5/25/73	2	middle
5/25/73	4	bottom 3/4th
6/1/73	3	middle
6/1/73	4	top half
6/1/73	5	all
6/1/73	8	middle

and Exhibit C, pages 1, 2, 3, 4, and 11A.

See Wigmore 3rd edition page 415 paragraph 30 on Inferences

> "The process of adducing evidence and passing upon probative value is and must be based ultimately on the canons of ordinary reasoning whether explicitly or implicitly employed"

Also in Wigmore 3rd edition page 423 on "Proof in Logic"

> "The single inquiry is whether the argument offered as involving proof does really fulfill the logical requirements."

Should this Court fail to deny the Defendants' MOTION TO DISMISS and grant a SUMMARY JUDGEMENT for the Plaintiff, the Plaintiff expects this Court to order or subpoena all Defendants to appear in court for direct examinations as witnesses for the Plaintiff, whenever any hearings are scheduled, or allow depositions if any substantial delay is likely.

The Plaintiff expects this Court to deny the Defendants' MOTION TO DISMISS and to declare a SUMMARY JUDGEMENT for the Plaintiff.

Ralph J. Lombardi
Pro Se

I, Ralph J. Lombardi, do hereby certify that I have this date provided a copy of the foregoing CLAIM FOR SUMMARY JUDGEMENT FOR THE PLAINTIFF to M. Joseph Blumenfeld of 450 Main Street, Hartford, Connecticut, and mailed copies to the following:

Attorney General Carl R. Ajello
Attn: Daniel R. Schaefer, Assistant Attorney General
30 Trinity Street
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September 12, 1975

11-27-75 HTFD. COURANT Exhibit "O"

Police Board Faces Grievances

NEW HAVEN — The way has been cleared for nine current and former city policemen, including one fired in January for allegedly lying about his marijuana use, to file grievances against the Board of Police Commissioners.

Superior Court Judge Thomas O'Sullivan ruled Tuesday the nine men have the right to take their cases to the state Board of Mediation and Arbitration.

The ruling applies to Paul Kaplowe, who was fired in January after the board charged that he failed to disclose on an application that he used marijuana.

Kaplowe, who admitted to taking a few puffs of marijuana while in high school, contends his action does not qualify him as a drug user.

The ruling also applies to policemen John Maher and Paul McCormick, who were suspended in August 1973, after refusing to take lie detector tests in connection with papers missing from the Police Department.

Two detectives, William White and Ralph DiNello, who were dismissed in February 1973 in connection with a false drug arrest, also are affected.

The dismissals came after nine persons were charged with possessing cocaine, which actually was quinine.

Others affected are Frederick K. Nugent, Bertram Martus, William Tyler and Louis Cavalier.

Identification Snag Spurs Retrial Order

A federal appeals court Wednesday ordered a new trial for a 34-year-old Hartford man convicted on narcotics charges, saying he was improperly identified by an undercover agent.

A three-judge panel of the U. 2nd Circuit Court of Appeals in New York said Nowell A. Brathwaite must be retried. If state prosecutors do not decide to retry him within 20 days, Brathwaite must be freed, the court said.

Brathwaite is serving a two-to-four-year sentence for bank robbery and a concurrent six-to-10-year sentence for the sale of heroin.

Because the identification of Brathwaite in the narcotics case was critical to the prosecution, according to a source, he could not be retried without it. But a spokesman for the Hartford County state's attorney's office said it was likely the case would be appealed further to the entire Second Circuit panel, and if necessary to the U.S. Supreme Court.

Before Wednesday's ruling, Brathwaite had lost appeals to the Connecticut Supreme Court and a petition to U.S. District Court Judge M. Joseph Blumenfeld. It was Blumenfeld's ruling that the appeals court reversed.

The court said Brathwaite was improperly identified through the cooperative efforts of an undercover agent and a police detective. The court ruled that the agent who identified Brathwaite through a single mug shot should have been shown other photos.

EXHIBIT "O" HTFD. COURANT 11-27-75

Trade Surplus Continues To Grow

WASHINGTON (AP) — The United States sold corn and soybeans overseas in October and cut its purchases of foreign oil, pushing the nation's trade accounts toward a record annual surplus, the government reported Wednesday.

The Commerce Department said exports were $1.076 billion higher than imports in October. The September surplus was $976 million.

So far U.S. exports are $9.5 billion ahead of imports with two months left to go in the year. The record surplus for a year, based on a system of accounting different from but basically comparable to the current system, was $7.083 billion in 1964. If there was a big deficit in the last two months of this year the total surplus for the year would not be a record.

The continuing surplus holds out a prospect of lower prices on imported goods for Americans as the swelling trade surplus helps strengthen the dollar against foreign currencies.

SECEDED IN 1861

Mississippi seceded from the union in 1861.

O